Cambridge Health Alliance

HARVARD
MEDICAL SCHOOL
TEACHING AFFILIATE

September 15, 2014

The Honorable Janet L. Sanders
c/o Antitrust Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108

Re: *Commonwealth of Massachusetts v. Partners HealthCare System, Inc., South Shore Health and Educational Corp., and Hallmark Health Corp.*, Superior Court Civil Action No. 14-2033-BLS2

Dear Judge Sanders:

Pursuant to the process established by order of the Court on June 30, 2014 and July 17, 2014, the Cambridge Public Health Commission, d/b/a Cambridge Health Alliance ("CHA"), submits the following comments regarding the proposed consent judgment in the above-referenced case for the Court's consideration by the Court.

In its July 17, 2014 order, the Court postponed the hearing date and extended the deadline for submitting comments to allow for consideration of the findings of the Health Policy Commission (the "HPC") that have been issued in the HPC's Review of Partners Healthcare System's Proposed Acquisition of Hallmark Health Corporation Pursuant M.G.L. c. 6D, § 13 (September 3, 2014) (the "PHS-HHC Final Report"). CHA agrees with the findings of the PHS-HHC Final Report and the concerns raised by the HPC therein. In addition to these concerns, CHA is concerned that the terms of the proposed consent judgment, particularly as they relate to the acquisition of Hallmark Health Corporation ("Hallmark") by Partners HealthCare System, Inc. ("Partners"), will exacerbate the current market dysfunction in the metro north Boston region and threaten access to essential healthcare services, including behavioral health services, for vulnerable, low income populations

Accordingly, CHA also submits these comments for consideration by the Office of the Attorney General ("AGO"), Partners, and Hallmark as they negotiate modifications to the proposed consent judgment based on the HPC's findings in the PHS-HHC Final Report.

I. Background on CHA.

As the sole acute care public hospital in Massachusetts, CHA plays an important role in the health of the communities it serves, delivering accessible high-value care to patients and serving as a safety net for complex, diverse, and needy populations. CHA's primary service

area, which consists of the metro north communities of Malden, Chelsea, Revere, Everett, and Winthrop ("MCREW") as well as Cambridge and Somerville, is proximate to and in part overlaps the service areas of Massachusetts General Hospital ("MGH") and Hallmark. CHA entered the MCREW market in 2001 when it saved the then Whidden Memorial Hospital in Everett and its essential services from closure by acquiring the ailing, largely government payer hospital from Hallmark, a solution supported by state and federal officials. As part of this transaction, CHA also acquired 44 adult psychiatric inpatient beds that were slated for elimination by Hallmark following the closure of Hallmark's Malden Hospital and relocated these beds to the CHA Whidden Hospital campus.

With the highest concentration of Medicaid and low-income patients measured as a percentage of revenue among Massachusetts hospitals, 82%, CHA serves vulnerable and underserved patient populations, including culturally and linguistically diverse patients with complex socioeconomic issues. As a regional behavioral health resource, CHA provides 11% of all Medicaid and low-income psychiatric inpatient care in general acute care hospitals in Massachusetts.[1]

II. CHA is concerned that the proposed consent judgment will exacerbate the current market dysfunction arising from rate disparities and Partners' market dominance that threatens access for Massachusetts' most vulnerable populations.

As a safety net provider, CHA greatly appreciates the AGO's efforts to highlight the problem of rate disparities in the Massachusetts healthcare market. Existing rate disparities in the MCREW market threaten access to and increase the cost of healthcare in Massachusetts. CHA is concerned that the proposed consent judgment will exacerbate the current market dysfunction arising from the current rate disparities and Partners' market dominance that threatens access for Massachusetts' most vulnerable populations.

As the AGO noted in its seminal 2010 report on health care costs, "[h]igher priced hospitals are gaining market share at the expense of lower priced hospitals, which are losing volume."[2] Lower priced hospitals are not able to recruit physicians and make investments in buildings, equipment, and technology to a comparable extent as higher priced hospitals and are thus "disadvantaged in their efforts to gain leverage, attract patients, and preserve market share and revenue."[3] Because higher prices correlate to increased volume, lower priced providers can not compensate for low price with increased volume.[4] "Instead, these providers continue to lose volume to higher-priced hospitals, making it increasingly difficult for them to remain competitive, or sometimes even viable."[5]

Payer and service mix differences compound these problems because healthcare providers depend on "a balanced mix of services and payers to maintain financial viability and

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[1] Based on MassHealth Data Consortium Inpatient Discharge Database for FY11.
[2] OFFICE OF ATT'Y GENERAL MARTHA COAKLEY, EXAMINATION OF HEALTH CARE COST TRENDS AND DRIVERS PURSUANT TO G.L. C. 118G § 6 ½(b): Report for Annual Public Hearing (the "2010 AGO Report"), at 38 (Mar. 16, 2010).
[3] *Id.* at 38-39.
[4] *Id.* at 40.
[5] *Id.*

adequate access to all services."[6] As the HPC has observed, "Contrasting trends in payer mix and service mix across different providers can contribute to, or exacerbate, financial distress at providers that care for the highest mix of government payer patients or provide the greatest proportion of low-margin services – with potential long-term consequences for access for such patients and to such services."[7]

This dysfunction and these threats to patient access are a stark reality in the MCREW healthcare market. Based on the most recent competitive inpatient hospital discharge data available, State Fiscal Year 2012, from the Massachusetts Health Data Consortium, Partners hospitals account for 36% of inpatient discharges (excluding normal newborns) reported for the MCREW market. If Hallmark were part of Partners, the combined system's market share would be 52%. The next two largest systems combined, CHA at 19% and Beth Israel Deaconess Medical Center at 7%, combined market share of 26%, half the share of Partners following the Hallmark acquisition.[8]

CHA Whidden Hospital Primary Service Area, Inpatient Discharges (SFY09-SFY12) by Hospital/System
Whidden PSA: Malden, Chelsea, Revere, Everett, Winthrop (MCREW)
Excludes Normal Newborns
Source: MHDC Database

	MCREW Inpatient Discharges				% of MCREW Market Share			
Hospital/System	SFY09	SFY10	SFY11	SFY12	SFY09	SFY10	SFY11	SFY12
MCREW								
Mass General Hospital	7,313	7,347	7,617	7,461	28%	28%	29%	29%
Hallmark Health	4,209	4,454	4,317	3,987	16%	17%	16%	16%
North Shore Medical	370	363	391	387	1%	1%	1%	2%
All Other Partners	1,399	1,318	1,345	1,351	5%	5%	5%	5%
Cambridge Health Alliance	4,545	4,208	4,737	4,812	18%	16%	18%	19%
Beth Israel Deaconess	1,975	2,120	1,949	1,762	8%	8%	7%	7%
Mount Auburn Hospital	440	447	393	453	2%	2%	1%	2%
All Other Non-Partners	5,492	5,527	5,582	5,249	21%	21%	21%	21%
Total MCREW	**25,743**	**25,784**	**26,331**	**25,462**	**100%**	**100%**	**100%**	**100%**

According to the Center for Health Information and Analysis data on relative prices (2012), some of the largest prices disparities for the state's major private insurers exist in the Metro North Boston region. MGH is reimbursed 2 to 2.2 times Cambridge Health Alliance for the same hospital services and quality of care. Hallmark Health System is also reimbursed at a higher level, 1.3 to 1.5 times the level of Cambridge Health Alliance.

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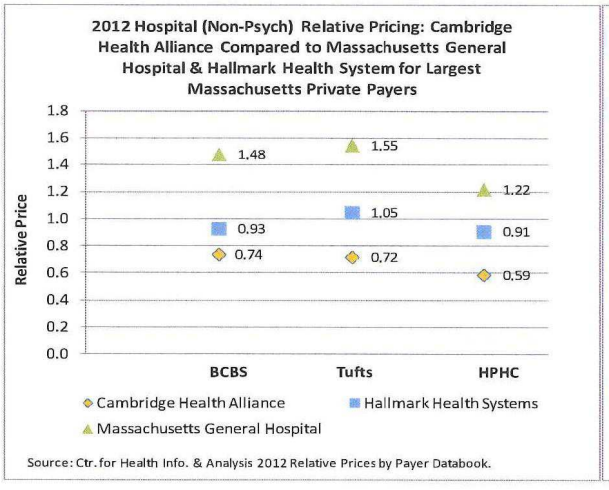
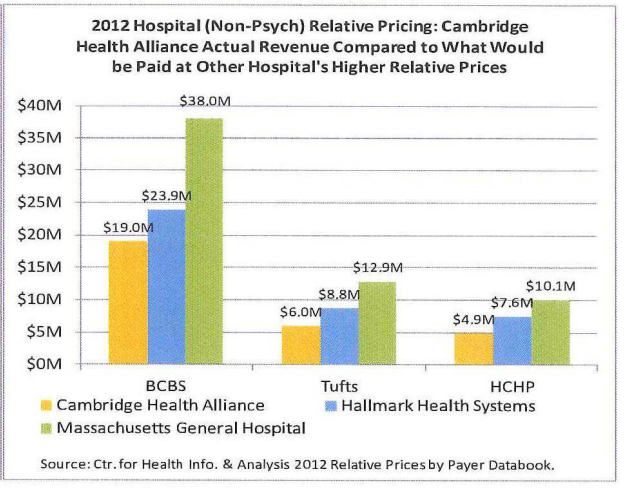
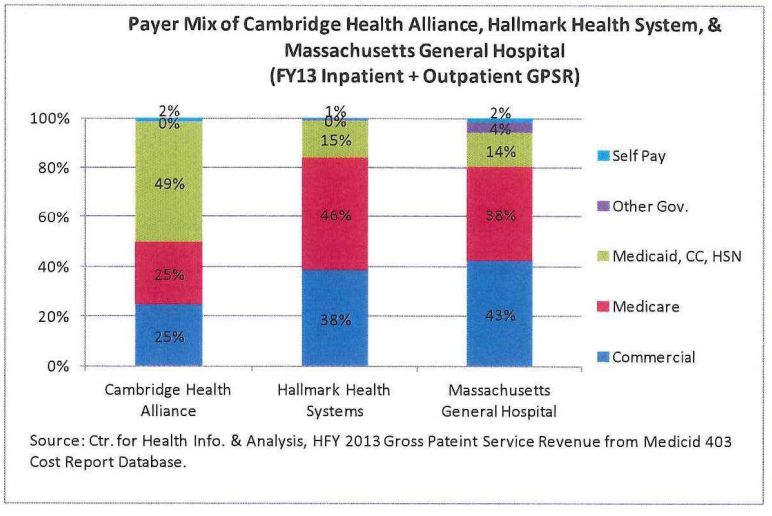
[6] HEALTH POLICY COMM'N, REVIEW OF PARTNERS HEALTHCARE SYSTEM'S PROPOSED ACQUISITIONS OF HALLMARK HEALTH CORP. PURSUANT TO M.G.L. 6D, § 13, FINAL REPORT (the "PHS-HHC Final Report"), at 75 (Feb. 19, 2014.)
[7] HEALTH POLICY COMM'N, REVIEW OF PARTNERS HEALTHCARE SYSTEM'S PROPOSED ACQUISITIONS OF SOUTH SHORE HOSPITAL (HPC-CMIR-2013-1) AND HARBOR MEDICAL ASSOCIATES (HPC-CMIR-2013-2) PURSUANT TO M.G.L. 6D, § 13, FINAL REPORT, Exhibit B-1 at 7 (Feb. 19, 2014.) *See also* PHS-HHS Final Report at 75.
[8] MASSACHUSETTS HEALTH DATA CONSORTIUM, State Fiscal Year 2012, October 2011-September 2012.



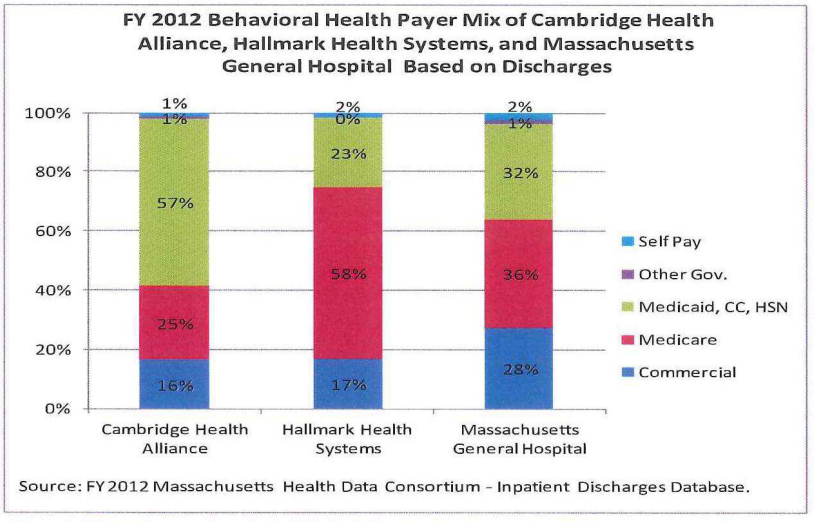


As noted by the HPC in the PHS-HHC Final Report[9], CHA's Medicaid and low-income public payer mix is 3.3 times greater than that of Hallmark and MGH. CHA has the highest Medicaid and low-income public payer mix in the state of roughly 49%, while other MetroNorth region providers such as Hallmark and MGH have a modest Medicaid and low-income public payer mix of 15% or below.



CHA is also an important access point for behavioral health services for Medicaid and low-income patients. While Hallmark is an important provider of behavioral health services to older populations, the comparative payer mix data below for inpatient behavioral health services shows that CHA provides care to 57% Medicaid and low-income public payer populations compared to 23% at Hallmark.

[9] PHS-HHC Final Report at 38.



Significantly, CHA also provides a major role in the ongoing care for residually uninsured populations in these gateway communities north of Boston and regionally. Although approximately 97% of the residents of Massachusetts are now insured[10], a disproportionate 10% of CHA's patients are uninsured..

The HPC has identified that the general market concerns brought to light in the AGO's 2010 AGO report will likely come to pass if Partners is permitted to relicense and repurpose Hallmark's Lawrence Memorial Hospital facility ("LMH") as contemplated by the Affiliation Agreement between Partners and Hallmark.[11] Looking solely at commercial rates, the HPC has found that the relicensure and repurposing of LMH will likely increase the costs of healthcare in Massachusetts.[12] In reaching this conclusion, the HPC noted that, contrary to Partners' assertions, volume increases at the relicensed and repurposed LMH are "more likely to come from net volume reductions at non-Partners hospitals than from any net changes at Partners' [academic medical centers]."[13] This holds true where, as with Partners' plans, there is not a documented community need for the particular high-margin services contemplated to be offered at the repurposed and relicensed LMH.[14]

Government payers have less favorable reimbursement than private payers, and the services essential for safety net populations such as behavioral health services also have less favorable reimbursement than other services. In addition, while CHA, a major safety net health care delivery system, can compete in terms of quality of care with competency in care for diverse populations, CHA is unable to compete in terms of market dominant reimbursement rates commanded by Partners. This deprives CHA of necessary funds from private insurance to support ongoing patient care and necessary investments in otherwise underserved communities and patient populations as Partners draws away its patients. To the extent that Partners is able to

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[10] CENTER FOR HEALTH INFORMATION AND ANALYSIS, ANNUAL REPORT ON THE PERFORMANCE OF THE MASSACHUSETTS HEALTH CARE SYSTEM, at 6 (September, 2014).

[11] Application by Hallmark Health System, Inc. for Determination of Need under 105 C.M.R. 100.600-603 for Change of Ownership of Hallmark Health System, Attachment G, Affiliation Agreement ("Affiliation Agreement"), at Ex. 4.4.1-A, § I.A.2. (Apr. 4, 2014).

[12] PHS-HHC Final Report at 67.

[13] *Id.* at 56.

[14] *Id.* at 73-75.

continue raising prices in the context of an overall statewide cost growth benchmark, these rate disparities and the consequences arising therefrom will continue. Although it would not turn back the clock and create a permanent solution a freeze on Partners' prices, would at least begin to address the current market distortions.

III. The physician cap in the proposed consent judgment needs to more strongly protect access to providers for vulnerable populations.

Disparities in relative financial position arising from market dominance negatively impact the ability of healthcare systems for recruit physicians needed to provide services to the populations they serve.[15] Providers who receive higher rates "have already amassed far greater resources to recruit physicians and in invest in other provider alignments, and as a result secure referrals to their organizations."[16] These "[h]ighly-resourced providers can offer immediate and long-term financial advantages to physicians" in terms of practice infrastructure, facilities, earnings potential, and protections against downside risk that providers paid lower rates cannot offer.[17]

CHA appreciates that the proposed consent judgment currently acknowledges and accounts in part for the risks that safety net providers presently face in the Massachusetts healthcare market by requiring AGO approval for "the acquisition of, employment of, or affiliation with . . . any existing physician group of four (4) or more physician groups" from the communities in CHA's service area.[18] This mechanism does not account for the incremental recruitment of physicians from other, more poorly reimbursed, providers, however, and will still allow Partners to grow at the expense of safety net systems such as CHA, threatening their viability if providers, especially in key specialties, are lured away one by one.[19] At a minimum and consistent with addressing the risks to poorly reimbursed providers identified by the AGO and HPC, an affirmative restriction prohibiting the solicitation and recruitment of existing non-academic medical center community physicians from other practice groups and hospitals in eastern Massachusetts that mirrors the restriction in paragraph 105 of the proposed consent judgment is needed to assure that smaller safety net systems will be able continue to provide an appropriate spectrum of services to the vulnerable populations they serve.

Ensuring that safety net and other systems can retain physicians is essential for patient access. As noted by Health Care for All in its comments on the proposed consent judgment, Partners does not contract with many of the MassHealth MCOs through which safety net patients receive insurance coverage.[20] Safety net other providers that do contract with the MassHealth MCOs must therefore be able to provide these patients an appropriate range of services but cannot do so if physicians are recruited away by more highly reimbursed hospital systems. For community hospitals or smaller systems, the loss of even one specialist in a particular specialty can jeopardize its ability to provide these services to its patients. The current realities of the

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[15] OFFICE OF ATT'Y GENERAL MARTHA COAKLEY, EXAMINATION OF HEALTH CARE COST TRENDS AND DRIVERS PURSUANT TO G.L. C. 6D § 8: Report for Annual Public Hearing (the "2013 AGO Report"), at 61 (April 24, 2013).
[16] *Id.*
[17] *Id.*
[18] Proposed Consent Judgment at ¶ 104.
[19] 2013 AGO Report at 61; PHS-HHC Final Report at 15-16.
[20] Comment of Health Care for All at 6-7.

market as found by both the AGO and the HPC dictate tighter protections than currently set forth in the proposed consent judgment.

IV. The repurposing and relicensing of LMH will not only threaten healthcare access in Medford and its adjacent communities but also raise the cost of healthcare in Metro North Boston and undermine component contracting by removing LMH from the Hallmark Contracting Component.

CHA is very concerned that Partners' plans to reallocate services north of Boston would, if allowed to be consummated as contemplated in the Affiliation Agreement between Partners and Hallmark, lead to the consequences that the AGO and HPC have warned of as discussed in Section II above. In particular, the repurposing and relicensing of LMH will not only threaten healthcare access in Medford and its adjacent communities but also raise the cost of healthcare in Metro North Boston and undermine component contracting by removing LMH from the Hallmark Contracting Component.

As a safety net provider, CHA's service mix is weighted toward community-level services including general medicine, routine obstetrics, general surgery, and psychiatry. As shown below, within the MCREW market, Partners and Hallmark have more than double CHA's market share in all inpatient services, with the exception of psychiatry where CHA has more discharges and higher market share than Partners/Hallmark.[21]

Total MCREW Inpatient Hospital Service Mix & Market Share (SFY12)												
	Partners & Hallmark			CHA			BIDMC			All Others		
Specialty	Discharges	Service Mix	Market Share	Discharges	Service Mix	Market Share	Discharges	Service Mix	Market Share	Discharges	Service Mix	Market Share
Total Medicine	6,513	49%	**53%**	2,693	56%	**22%**	759	43%	**6%**	2,223	39%	**18%**
Total Surgery	2,192	17%	**55%**	476	10%	**12%**	288	16%	**7%**	1,003	18%	**25%**
Total Ortho/Rheum	1,083	8%	**52%**	222	5%	**11%**	167	9%	**8%**	593	10%	**29%**
Total OB/GYN	1,885	14%	**51%**	432	9%	**12%**	396	22%	**11%**	965	17%	**26%**
Total Psychiatry	829	6%	**37%**	891	19%	**39%**	34	2%	**1%**	516	9%	**23%**
Total Other	684	5%	**53%**	98	2%	**8%**	118	7%	**9%**	402	7%	**31%**
Grand Total	**13,186**	**100%**	**52%**	**4,812**	**100%**	**19%**	**1,762**	**100%**	**7%**	**5,702**	**100%**	**22%**

In addition, Partners has historically been able to invest in more medical and surgical services, which receive higher reimbursement and yield a greater return on investment than is possible in community-level medicine and behavioral health.

Based on the plans set forth in the Partners-Hallmark Affiliation Agreement, the differences in service mix will only widen as Partners implements its plans to convert LMH from a medical/ surgical community level hospital facility to an MGH-licensed and operated "mixed use outpatient and short stay facility" focused on providing more highly reimbursed services orthopedics, cardiology and digestive health.[22] This is especially concerning given the HPC's finding that Partners has targeted these well-reimbursed services for expansion without the benefit of a community needs assessment to determine if there is unmet community need for

[21] MASSACHUSETTS HEALTH DATA CONSORTIUM, State Fiscal Year 2012, October 2011-September 2012.
[22] Affiliation Agreement, Exhibit 4.4.1-A, § I.A.2(b); "Partners Healthcare Affiliation Fact Sheet", found at http://www.hallmarkhealth.org/Partners-Affiliation.html; "Employee FAQs related to proposed affiliation of Hallmark Health System and Partners HealthCare", found at http://hallmarkhealth.org/dmdocuments/Employee%20FAQ.pdf

them.[23] A combined Partners and Hallmark will be able to further use their combined financial advantages grounded in rate disparities to compound their existing service mix market advantage over CHA and other providers.

Although a key component of Partners' rationalization plan is the expansion of behavioral health services[24], the plan could lead to the perverse result of actually decreasing access to both inpatient and outpatient behavioral health services. As noted above, the HPC predicts that increased volume at LMH will come from other community hospitals. The services that would be siphoned away from CHA and other community hospitals are better reimbursed on the whole than psychiatric services. CHA relies on these revenues to subsidize its psychiatry services. If these services are siphoned away, CHA may not be able to continue operating its current full complement of inpatient psychiatry beds or continue with its efforts to make outpatient behavioral health services available to more of the patients it serves. As the HPC observed with respect to this plan, "Changes to the service mix or payer mix of [Partners and Hallmark] may impact the financial condition of other area providers with potentially significant implications for how our health care system finances adequate access to all needed services, including low-margin services, for all populations."[25]

To mitigate the cost impacts identified by the HPC and to ensure that Partners' plans with respect to Hallmark do not threaten access to behavioral health and other services, CHA believes that the proposed consent judgment needs, at a minimum, to be modified to (a) absolutely preclude the relicensure of LMH or Union Hospital as MGH facilities and (b) require a full community needs assessment, prior HPC review, and prior AGO approval of any reprogramming at LMH or Union Hospital.

V. The HPC should review the proposed consent judgment.

CHA appreciates the efforts of the AGO to highlight the rate disparity and related issues discussed above. CHA also appreciates that the regulatory scheme governing healthcare in Massachusetts is a complex Venn diagram of responsibilities and oversight that do not wholly overlap in all circumstances or provide mechanisms to address all scenarios, including the present matter. The proposed consent agreement is predicated on a complex concept, component contracting. The PHS-HHC Final Report raises serious questions about the effectiveness of component contracting, at least with respect to the Partners-Hallmark transaction. CHA believes that the AGO should submit the proposed consent judgment to the HPC for a thorough overall review and analysis because the proposed consent judgment effectively amounts to a material change that would otherwise be subject to HPC review under M.G.L. c. 6D, § 13.

CHA is also concerned that by including the proposed South Shore and Hallmark transactions, the proposed consent judgment will perpetuate the existing rate disparities and market dysfunction in the Massachusetts health care market resulting in diminished patient access for the Commonwealth's most vulnerable populations as described in the preceding section. With respect to Partners' acquisition of Hallmark, CHA is particularly concerned that

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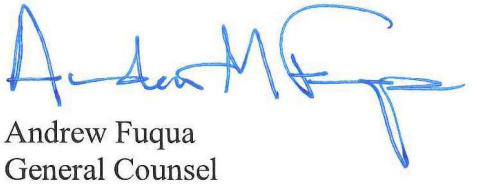
[23] PHS-HHS Final Report at 74.
[24] Affiliation Agreement at Ex. 4.4.1-A.
[25] PHS-HHC Final Report at 75.

the proposed consent judgment does not currently sufficiently address the threats to access posed by the current market conditions as identified by the AGO and the HPC.

For the foregoing reasons, CHA believes that the proposed consent judgment is not in the public interest and requests that the Court not approve it. Any such agreement that will further Partners' already market dominant position in Massachusetts should be submitted the HPC and other policy-making bodies of the Commonwealth to review the many short- and long-term policy implications of such an agreement.

CHA thanks the Court, the AGO, and the other parties for the opportunity to provide these comments.

Sincerely yours,



Andrew Fuqua
General Counsel